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10
11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**
13 **SAN JOSE DIVISION**

14 ARIEL ABITTAN,
15 PLAINTIFF,
16 v.
17 LILY CHAO ET AL,
18 DEFENDANTS,
19 and
20 EIAN LABS INC.,
21 NOMINAL DEFENDANT.

Case No.: 5:20-cv-09340-NC

STIPULATION AND JOINT REQUEST
OUT OF TIME TO CONTINUE
CASE MANAGEMENT CONFERENCE;
ORDER

Magistrate Judge:
Nathanael M. Cousins

Pursuant to Fed. R. Civ. P. 16 & 26(f) and Civil Local Rules 6-1, 6-2, 16-9 and 16-10, defendants Lily Chao (a/k/a Tiffany Chen, a/k/a Yuting Chen) (“Chao”), and Damien Ding (a/k/a Damien Leung, a/k/a Tao Ding) (collectively “Defendants”)¹ and plaintiff Ariel Abittan (“Plaintiff”) by and through their respective counsel, stipulate and request as follows:

WHEREAS, Plaintiff commenced this action on December 24, 2020;

WHEREAS, a Case Management Conference is currently set for one week from today, *i.e.*, **October 6, 2021**;

WHEREAS, Defendants are seeking a continuance of the Case Management Conference by 26 days to **November 17, 2021**.

WHEREAS, the parties understand that, absent a continuation of the Case Management Conference, a Joint or Separate Case Management Statement would be due **today, September 29, 2021**;

WHEREAS, the parties understand and appreciate that the instant request is **out of time** under Civil L.R. 6-1(b);

WHEREAS, pursuant to **Civil L.R. 6-2(a)(1)**, Defendants “set forth with particularity, the following reasons for the requested enlargement [] of time” as follows:

1. The undersigned counsel was retained two days ago to substitute for Defendants’ prior counsel, Fenwick & West LLP for the instant civil action. Meroney Decl. ¶ 1.
2. The undersigned counsel is also being substituted for Defendants’ prior counsel, Fenwick & West LLP, in two California state court cases involving some of the same parties. One of the cases involves plaintiff in this case, Ariel Abittan. Case No. 20-cv-372622 in the Superior Court of the State of California, County of Santa Clara. Meroney Decl. ¶ 2.
3. There are a number of imminent deadlines in all cases, including for, meet & confers, pleadings and other court filings/submissions, and hearings over the coming days and weeks. Meroney Decl. ¶ 3.
4. The undersigned counsel is urgently working to meet as many deadlines as possible in all

¹ Defendants do not concede the “a/k/a” aliases from the caption of Plaintiffs’ original complaint are correct. See e.g., Dkt. 74 (Chen Declaration).

1 cases while seeking the minimum extensions necessary to ensure a proper and orderly
2 transition. Meroney Decl. ¶ 4. Simultaneously the undersigned counsel is urgently
3 reviewing pleadings and files in all cases to come up to speed in all matters as quickly as
4 possible.

5 5. A Joint or Separate Case Management Statement is normally due one week prior to the
6 Case Management Conference. In addition to the Federal Rules with respect to that
7 Statement, the undersigned understands the need to comply with all requirements of LR
8 16-9, LR 16-10, and the Standing Order for All Judges of the Northern District of
9 California regarding Contents of Joint Case Management Statement. Meroney Decl. ¶ 5.

10 6. In addition, under Fed. R. Civ. P. 26(f), parties must “meet and confer” at least 21 days
11 before a scheduling conference is held or a scheduling order is due under Fed. R. Civ. P.
12 16(b). Defendants’ undersigned counsel understands that the Rule 26(f) conference has
13 not yet occurred and is already out of time. Defendants need to prepare positions and the
14 parties’ counsel need to meet in order to satisfy Rule 26(f) sufficiently before deadlines
15 relating to the Case Management Statement and the Case Management Conference.
16 Meroney Decl. ¶ 6.

17 7. Absent the requested continuation, Defendants would likely be prejudiced by a lack of
18 sufficient time to fully satisfy all requirements of the Federal Rules and this Court’s
19 Standing Order, i.e., to fully evaluate & develop positions for a Rule 26(f) conference, to
20 jointly prepare a Joint Case Management Statement and prepare for the Case Management
21 Conference. Meroney Decl. ¶ 7.

22 8. The undersigned has sought and received Plaintiff’s consent to a relatively short
23 continuance of the Case Management Conference, namely, from the current date of
24 October 6, 2021 to November 17, 2021. (Under this proposal, a Joint or Separate Case
25 Management Statement one week prior would be November 10, 2021.) Meroney Decl. ¶
26 8.

1 WHEREAS, pursuant to **Civil L.R. 6-2(a)(2)**, Defendants “[d]isclose[] all previous time
2 modifications in the case, whether by stipulation or Court order” as follows:

3 9. On March 5, 2021, Dkt. 22, the Court continued the Initial Case Management Conference
4 set for March 17, 2021 to April 28, 2021. Meroney Decl. ¶ 9.

5 10. On April 21, 2021, Dkt. 44, the Court entered a Modified Order re 43 Stipulation Setting
6 Schedule and Extending Time to Respond. The Court continued the Case Management
7 Conference set for April 28, 2021 to July 7, 2021. Meroney Decl. ¶ 10.

8 11. On June 28, 2021, Dkt. 67, the Clerk issued a Notice continuing the Case Management
9 Conference set for July 7, 2021 to July 28, 2021. Meroney Decl. ¶ 11.

10 12. On July 19, 2021, Dkt. 79, the Clerk issued a Notice continuing the Case Management
11 Conference set for July 28, 2021 to the currently scheduled date of **October 6, 2021**.
12 Meroney Decl. ¶ 12.

13 WHEREAS, pursuant to **Civil L.R. 6-2(a)(3)**, Defendants “[d]escribe[] the effect the
14 requested time modification would have on the schedule for the case” as follows:

15 13. The undersigned understands that Defendants’ prior counsel and Plaintiffs’ counsel have
16 not met and conferred under Rule 26(f), have not served discovery, and therefore no
17 discovery deadlines would be affected. Meroney Decl. ¶ 13.

18 14. The undersigned counsel is currently aware of an upcoming deadline of October 4, 2021 to
19 respond to “Plaintiff’s Motion for an Order Allowing Defendants Lily Chao and Damien
20 Ding to Be Served (1) Through Counsel...”, Dkt. 8, filed September 20, 2021. Meroney
21 Decl. ¶ 14. Defendants have not yet determined whether it may need a continuance of that
22 deadline.

23 15. As there has not yet been a Case Management Conference, the undersigned counsel
24 understands no other deadlines in this civil action have been established. Meroney Decl. ¶
25 14.

26 16. By continuing the Case Management Conference by 26 days, the parties estimate that
27 essentially all future dates in the case may be pushed back by approximately 26 days.
28

1 IT IS ACCORDINGLY STIPULATED, pursuant to Civil L.R. 6-1 and Civil L.R. 6-2, by
2 and between Defendants and Plaintiff, that the parties jointly request that the Court continue the
3 Case Management Conference from current date of October 6, 2021 to November 17, 2021.

4
5
6 DATED: September 29, 2021

Respectfully submitted,
ROCHE FREEDMAN LLP
Constantine Economides

7
8 By: /s/ Constantine Economides

9
10 DATED: September 29, 2021

CULHANE MEADOWS PLLC
Millicent S. Meroney

11
12 By: /s/ Millicent S. Meroney

13 I hereby attest that I obtained consent in the filing of this document from each of the other
14 signatories on this e-filed document.

15 DATED: September 29, 2021

CULHANE MEADOWS PLLC
Millicent S. Meroney

16
17 By: /s/ Millicent S. Meroney

18 * * *

19 ORDER

20 IT IS ORDERED THAT:

21 The above stipulation and joint request of counsel to continue the Case Management
22 Conference from current date of October 6, 2021 to November 17, 2021 at 10:00 a.m., is
23 GRANTED. A Joint or Separate Case Management Statement shall be filed by November 10,
24 2021.

25
26 Dated: September 29, 2021

